

R.D. # 0017-02
Newark, New Jersey

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

CHATEAU INTERNATIONAL, INC.¹

Employer

and

CASE 22-RC-12283

**LOCAL 863, INTERNATIONAL
OF TEAMSTERS**

Petitioner²

DECISION AND DIRECTION OF ELECTION

The Petitioner filed a petition under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent a unit of regular full-time warehouse, shipping and production employees employed by the Employer at its Edison, New Jersey facility. The Employer contends that the petitioned for unit is inappropriate because three of the employees in the unit (Laura DeJesus Moreno, Carmen Fernandez and Hector Acevedo) are statutory supervisors pursuant to Section 2(11) of the Act. Based on the records, and for the foregoing reasons, I find that the Employer failed to establish the supervisory status of Laura DeJesus Moreno, Carmen Fernandez or

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

Hector Acevedo. As such, I find that the petitioned for unit is indeed appropriate and Order an election in the instant matter.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴
3. The labor organization involved claims to represent certain employees of the Employer.⁵
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

All regular full-time warehouse, shipping and production employees employed by the Employer at its Edison, New Jersey facility, excluding all

³ Briefs filed by the Employer and the Petitioner have been duly considered.

⁴ The Employer, a New York corporation, is engaged in the importing, repackaging, selling and distributing of ladies handbags at its Edison, New Jersey facility, the only facility involved herein. During the preceding 12 months, the Employer derived gross revenue in excess of \$50,000 from the sale and shipment of its merchandise directly to customers located outside the State of New Jersey. The parties stipulated and I find that the named Employer is engaged in commerce and subject to the Board's jurisdiction under Sections 2(2), (6), and (7) of the Act.

⁵ The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

temporary employees, office clericals employees, guards and supervisors as defined in the Act.

I. FACTS

A. Background:

The Employer is a New York corporation engaged in importing ladies handbags from overseas and preparing the handbags for resale in the United States. The Employer prepares the handbags at its Edison, New Jersey facility, the only facility involved herein. Once the handbags arrive at the Employer's facility, they are brought to an assembly/preparation area where they are stuffed with paper, tagged, labeled and repackaged for resale. The manner in which the handbags are prepared depends on specific orders issued by management. There are 4 preparation/assembly lines, as well as a small project/orders area. Depending on its needs, the Employer uses temporary employees, in addition to its regular staff. The small project/orders area has 10 to 12 employees assigned to it. In the assembly/preparation area, the number of employees assigned to each line varies from 10/12 employees per line to 25 employees per line. The number of lines that are up and running also vary. Additionally, depending on the orders, the small project/orders area may not be operational. On the day of the hearing, only three preparation lines were being used.

The Employer contends that the petitioned for unit is inappropriate because three of the employees in the unit (Laura DeJesus Moreno, Carmen Fernandez and Hector Acevedo) are statutory supervisors pursuant to Section 2(11) of the Act. In

support of its contention, the Employer produced one witness, Supervisor Jose Moreno⁶.

Moreno testified that he oversees the warehouse operation at the Employer's facility. Moreno supervises the work in two buildings, including the forklift operators, the preparation/assembly area and the small project/order area. Moreno reports to Warehouse Manager Randy Yang ("Yang"). Approximately two years ago, in response to Moreno's request for help, Yang promoted employees Laura DeJesus Moreno ("DeJesus-Moreno")⁷ and Carmen Fernandez ("Fernandez"). According to Moreno, upon being promoted, DeJesus-Moreno and Fernandez were told that they would assist Moreno in the preparation/assembly area and would distribute work. Approximately six to seven months ago, the Employer hired, also as Moreno's assistant, Hector Acevedo ("Acevedo"). Acevedo was assigned to the Employer's small project/orders area.

According to the Employer, DeJesus-Moreno, Fernandez and Acevedo, the alleged supervisors, have the authority to effectively recommend (1) hiring, discipline and/or firing of workers, (2) recall and/or hiring of temporary workers ("temps"); (3) wage increases; and have the authority to (1) assign work and direct employees, (2) train employees, (3) transfer employees and (4) resolve complaints/grievances. Additionally, the Employer asserts that secondary indicia of supervisory status support a finding that the DeJesus-Moreno, Fernandez and Acevedo are statutory supervisors in

⁶ Although Moreno's supervisory status is not at issue, Moreno testified that he does not have authority to hire, discipline, or fire employees. The authority and discretion to make these personnel decisions rests solely with Warehouse Manager Randy Yang.

⁷ Laura DeJesus Moreno is married to Supervisor Jose Moreno.

that (1) DeJesus-Moreno, Fernandez and Acevedo are considered as supervisors by temps and regular employees; (2) DeJesus-Moreno, Fernandez and Acevedo receive higher hourly rates than other employees; and, (3) the ratio of employees to supervisors supports a finding that they are supervisors.

B. Facts Pertaining to Supervisory Indicia:

(1) Recommending Hiring, Discipline and/or Firing

The Employer maintains that all three of the alleged supervisors have the authority to make hiring, discipline and/or firing decisions. In support of this assertion, Moreno testified that if workers are not getting along, DeJesus-Moreno and Fernandez have the authority to separate the workers if they engage in excessive talking while working on the assembly/preparation line. Moreno also testified that he does not always accept these recommendations and may “wait to see” what happens. In any event, the record establishes that it is Moreno who determines whether the workers will be separated. DeJesus-Moreno and/or Fernandez simply follow Moreno’s instruction. Moreno also testified that neither DeJesus-Moreno, Fernandez nor Acevedo have terminated, suspended or issued a written warning to any of the warehouse workers and have not recommended this action.

According to Moreno, Acevedo may recommend new hires, but has not exercised this authority. With regard to DeJesus-Moreno or Fernandez, Moreno testified that he recalls two employees [Lenora (surname unknown) and Ilsa Espinoza]

who were recommended by either DeJesus-Moreno *or* Fernandez - he did not recall which - and that these employees were hired.

The record shows, however, that the sole discretion to hire rests with Yang. With regard to hiring warehouse workers, the record shows that Yang meets with Moreno on an “as needed” basis. Moreno testified that neither DeJesus-Moreno, Fernandez nor Acevedo are included in these meetings.

(2) Recommending Recall and/or Hire of Temps

In support of the Employer’s assertions that the alleged supervisors have the authority to or have in fact recommended the recall and/or hiring of temps, Moreno testified that he determines the number of temps that are needed. Additionally the temps that are recalled are chosen in part by him and in part by the alleged supervisors. According to Moreno, there were two occasions in which DeJesus-Moreno recommended to Yang that certain temps not be recalled and they were not.

Moreno also testified that he has accepted the alleged supervisors’ recommendation when hiring a temp to a permanent position, even though he had not observed that temporary employee’s performance.

(3) Recommending Wage Increases:

Moreno testified that the alleged supervisors have the authority to recommend wage increase. However, the record reveals that, other than a suggestion by DeJesus-Moreno approximately a year ago, to the effect that everyone should receive a pay raise, the alleged supervisors have not exercised this authority.

(4) Directing Employees and Assigning Work:

The Employer asserts that the alleged supervisors are responsible for reviewing work orders, determining the priority of the work orders and directing and assigning work in an equitable manner. Moreno testified that there have been times when DeJesus-Moreno or Fernandez suggested that a specific line of workers be given a less difficult assignment because they (the workers) had already worked on a difficult order.

Additionally, Moreno testified that when overtime needs to be worked, he chooses which employees would work the overtime in the preparation/assembly area and Acevedo would choose which employees would work overtime in the small project/orders area. Decisions as to whether overtime is needed are made by Yang.

(5) Training Employees

The Employer asserts that the alleged supervisors are authorized to and do train employees. In support of this assertion, Moreno testified that DeJesus-Moreno, Fernandez and Acevedo are authorized to train newly hired workers and temps. Additionally, if DeJesus-Moreno, Fernandez and Acevedo find that a worker is performing a job incorrectly, they are authorized to correct the worker and show the worker the correct manner in which to perform his/her task. In that regard, Moreno testified that DeJesus-Moreno would tell a worker that additional paper is needed to stuff a handbag.

(6) Transferring of Employees

The record also reveals that each worker is assigned to a specific spot on one of the preparation/assembly lines and is to report to the same spot each day. If a worker

does not report to work on a given day, the alleged supervisors have the authority to move employees around so as to fill the empty spot on the affected assembly line. Moreno also testified, however, that he is the one who determines whether the vacancy will be filled at all. The alleged supervisors simply select the worker(s) that will be moved.

(7) Resolving Complaints/Grievances

The Employer maintains that the alleged supervisors have authority to resolve complaints/grievances. In support of this assertion, Moreno testified that if employees are not getting along, the alleged supervisors have the authority to move the employee(s). Moreno also testified that during times when the warehouse is hot and fans are used for ventilation, DeJesus-Moreno and Fernandez have authority to resolve employee complaints by moving fans around so as to ensure that everyone gets sufficient ventilation. Moreno testified that Acevedo has the authority to hear and resolve employee complaints in the small project/orders area. No specific examples were given.

II. ANALYSIS

Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well established that an individual need possess only one of the enumerated indicia of authority in order to be encompassed by the definition, so long as the

exercise of such authority (1) is carried out in the interest of the employer, and (2) requires the use of independent judgment. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-74 (1994). The legislative history of Section 2(11) indicates that Congress intended to distinguish between employees who may give minor orders and oversee the work of others, from those supervisors truly vested with genuine management prerogatives. *George C. Foss Co.*, 270 NLRB 232, 234 (1984). The exercise of some supervisory authority in a merely clerical, perfunctory or sporadic manner does not require a finding that an employee is a supervisor within the meaning of the Act. *Somerset Welding & Steel*, 291 NLRB 913 (1988).

The burden of proving supervisory status rests on the party asserting that status. *Kentucky River Community Care, Inc.*, 121 S.Ct. 1861, 1866 (2001); *Benchmark Mechanical Contractors Inc.*, 327 NLRB No. 151 (1999). The Board takes care not to construe supervisory status too broadly because the employee who is deemed a supervisor loses the protection of the Act. *Warner Co. v. NLRB*, 365 F. 2d 435, 437 (3rd Cir. 1966). Absent detailed, specific evidence of independent judgment, mere inference or conclusionary statements without supporting evidence are insufficient to establish supervisory status. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Sears Roebuck & Co.*, 304 NLRB 193 (1991). Whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least not on the basis of those indicia. *Phelps Medical Center*, 295 NLRB 486, 490 (1989).

In the present case, the Employer, the party raising the issue of supervisory status, bears the burden of proof. *Kentucky River Community Care, Inc.*, 121 S.Ct. at

1866. It is undisputed that neither DeJesus-Moreno, Fernandez nor Acevedo have the authority to hire, suspend, layoff, recall, promote, discharge or reward other employees. The Employer asserts, however, that the alleged supervisors possess several of the indicia under Section 2(11) of the Act that make them statutory supervisors. For the following reasons, I find that the Employer has failed to meet its burden.

A. Primary Indicia of Supervisory Status

(1) Recommending Hiring, Discipline and/or Firing

Based on the record, I find that the Employer failed to demonstrate that DeJesus-Moreno, Fernandez and Acevedo are empowered with the supervisory authority to “effectively recommend” hiring, discipline and/or firing of employees. For the supervisors to possess such authority, the record must show that the Employer is prepared to implement DeJesus-Moreno’s, Fernandez’s and/or Acevedo’s recommendations without independent investigations. *Children’s Farm Home*, 324 NLRB 61 (1997); *Chevron U.S.A Inc.*, 309 NLRB 59, 65 (1992). The evidence does not support this finding.

At the hearing, Moreno testified that all three of the alleged supervisors are authorized to make such recommendations. The evidence reveals, however, that Acevedo has never made such a recommendation. With regard to DeJesus-Moreno and Fernandez, Moreno testified that either DeJesus-Moreno *or* Fernandez recommended the hiring of employees Lenora (surname unknown) and Ilsa Espinoza and that these employees were in fact hired. However, not only does Moreno’s testimony evidence demonstrate that he is not sure who made the recommendations, all hiring decisions are made by Warehouse Manager Yang, who did not testify. Nor is there any evidence in

the record showing whether Yang was even notified of DeJesus-Moreno or Fernandez's recommendations, let alone whether he considered their recommendations. Nor is there any evidence in the record showing the criteria or steps Yang takes in making his final hiring determinations. Accordingly, there is no evidence in the record supporting the Employer's contention that Yang implemented DeJesus-Moreno's or Fernandez's (or that he would implement Acevedo's recommendations) without conducting an independent investigation of the applicants. *Quadrex Environmental Company, Inc.*, 308 NLRB 101 (1992). Additionally, the alleged supervisors' influence on hiring decisions is not supervisory in nature unless that influence is based on "delegated authority to participate in the hiring process." *Local Union No 195*, 237 NLRB 1099, 1102 (1978). Moreno testified that Yang meets with him on an "as needed" basis with regard to new hires. Neither DeJesus-Moreno, Fernandez nor Acevedo are included in these meetings. Therefore, the Employer has failed to provide any evidence to support its contention that the alleged supervisors effectively recommend the hiring of employees.

With regard to effectively recommending the discipline of employees, Moreno testified that Acevedo has not exercised his authority. Moreno also testified that DeJesus-Moreno and/or Fernandez could recommend that workers be separated if they engage in excessive talking or are not getting along. However, Moreno testified that he does not automatically accept the recommendation and may wait to see what happens. Even if Moreno were to accept such a recommendation, there is no evidence in the record showing that he would implement said recommendation without an independent investigation. *Cheveron U.S.A. Inc.*, 309 NLRB at 65. Moreno also testified that

DeJesus-Moreno and Fernandez are authorized to admonish employees by telling them that they will be separated if excessive talking continues. However, verbal counseling, warnings or reprimands that do not adversely impact an employee's employment status or benefits do not constitute discipline under the Act. *Ohio Masonic Home*, 295 NLRB 390 (1989); *Hydro Conduit Corp.*, 254 NLRB 433 (1981). If the talking continues, Moreno testified, alleged supervisors are to report to him and he will decide the action that needs to be taken. As such, the Employer's assertion that the alleged supervisors are empowered with authority to and in fact do effectively recommend discipline is unsupported. No examples were given in support of Acevedo's authority. There is no evidence in the record that the alleged supervisors have authority to recommend the discharge of employees. Accordingly, I find that the record fails to support a finding that, based on the asserted indicia herein, DeJesus-Moreno, Fernandez and Acevedo are statutory supervisors.

(2) Recommending Recall and/or Hire of Temps

In support of the assertion that the alleged supervisors are authorized to effectively recommend recall and/or hiring of temps, Moreno testified that on two occasions DeJesus-Moreno recommended to Yang that certain temps not be recalled. According to Moreno, the temps were not recalled. However, an inference that Yang made the decision based on DeJesus-Moreno's recommendation cannot be drawn. There is no evidence in the record regarding Yang's decision-making process when considering the recall and/or hiring of temps to permanent positions. An effective recommendation generally means that the recommended action is implemented without an independent investigation by superiors – not simply that the recommendation is

ultimately followed. *Children's Farm Home*, 324 NLRB 61. I find that the evidence presented regarding DeJesus-Moreno's recommendation, without more, amounts to a conclusionary statement and does not support a finding that DeJesus-Moreno is a statutory supervisor. *Id.*; *Chevron U.S.A Inc.*, 309 NLRB 59, 65 (1992); *Quadrex Environmental Co.*, 308 NLRB 101. Even if Moreno were to accept DeJesus-Moreno's, Fernandez' and/or Acevedo's recommendation that a certain temp be hired to a permanent position, there is no evidence in the record that any of the alleged supervisors has been delegated authority to participate in the hiring process. *Local Union No 195*, 237 NLRB 1099, 1102. Additionally, there is no evidence on the record that Moreno relayed this recommendation to Yang or, more importantly, that Yang implemented the recommendation without further investigation of the relevant circumstances. *Children's Farm Home*, 324 NLRB 61; *Chevron U.S.A., Inc.*, 309 NLRB 59, 65. Absent evidence of implementation without an independent investigation, I find that DeJesus-Moreno, Fernandez and Acevedo do not possess supervisory authority to effectively recommend the hiring/recall of temps.

(3) Recommending Wage Increases:

The Employer asserts that each of the alleged supervisors possesses the authority to effectively recommend wage increases. According to Moreno, De-Jesus-Moreno is the only alleged supervisor that has actually exercised this authority. The record establishes that, approximately one or two year ago, DeJesus-Moreno told Moreno that it was time that everyone received a raise because "the people were working hard." The record reveals that the Employer did not automatically implement a wage increase based on DeJesus-Moreno's recommendation. Instead, Moreno

testified that he and Yang saw for themselves that the employees were working hard and Yang made the decision to give the employees a wage increase. Without additional testimony and/or evidence, I find that DeJesus Moreno did not effectively recommend a wage increase. Instead, I find that she merely brought the matter to Moreno's attention and that he and Yang conducted an independent investigation that led to the wage increase. *Children's Farm Home*, 324 NLRB 61; *Chevron U.S.A.*, 309 NLRB at 65. Additionally, there is no record evidence as to how or when Fernandez and/or Acevedo would make this type of recommendation. Accordingly, I find that the record fails to support a finding that DeJesus-Moreno, Fernandez and Acevedo are authorized to or in fact have effectively recommended wage increases.

(4) Directing Employees and Assigning Work:

Based on the evidence, I find that the authority exercised by DeJesus-Moreno, Fernandez and Acevedo lacks the degree of independent judgment necessary to make them statutory supervisors. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Somerset Welding & Steel, Inc.*, 291 NLRB 913 (1988). In reaching this conclusion, I find that the work at issue is routine, repetitive in nature and predetermined by work orders that are received from the office and/or Moreno. *Kentucky River*, 121 S.Ct 1871; *Alois Box Co., Inc.* 326 NLRB 1177 (1998); *J.C. Brock Corporation*, 314 NLRB 157 (1994); *Quadrex Environmental Company, Inc.*, 308 NLRB 101; *Somerset Welding & Steel, Inc.*, 291 NLRB 913. In that regard, the record reveals that the work at issue involves stuffing paper into handbags, placing labels and/or tickets on the handbags and repackaging the handbags. DeJesus-Moreno distributes tickets and Fernandez distributes labels. Acevedo does both in the small orders area. Instructions

as to how much paper is stuffed into a specific handbag or which handbags get a label or a ticket are specified in the orders. The orders come from the office. DeJesus-Moreno, Fernandez and Acevedo merely read the orders and distribute the work accordingly. Some work orders are more difficult than others. Moreno testified that to ensure that the work is distributed in an equitable manner, DeJesus-Moreno and/or Fernandez have recommended that a certain line get the easier order. Moreno makes the decision. Moreno also testified that when “specialty priority orders” are received, DeJesus-Moreno and Fernandez choose the employees that will work on the priority. In the small projects area, Acevedo has the authority to assign priority and quick turnaround work. Not only do these recommendations not constitute effective recommendations, discussed above, there is no evidence in the record establishing that the assignment of orders is based on the alleged supervisors’ assessment of the workers’ skills, expertise or experience. *Sears Roebuck & Co.*, 292 NLRB 753 (1989); *Somerset Welding & Steel, Inc.* 291 NLRB 913; *Rose Metal Products, Inc.*, 289 NLRB 1153 (1988). Based on record evidence, I find that the authority possessed and/or exercised by DeJesus-Moreno Fernandez and Acevedo does not require the degree of judgment or discretion warranted to support a finding of supervisory status under the Act. *J.C. Brock Corporation*, 314 NLRB 157; *Quadrex Environment Co.* 308 NLRB 101; *Somerset Welding & Steel, Inc.* 291 NLRB 913 (1988).

(5) Training Employees

Moreno testified that DeJesus-Moreno, Fernandez and Acevedo train newly hired workers and temps, inspect the employees’ work and, if necessary, correct their mistakes. In support of this assertion, Moreno testified that DeJesus-Moreno and

Fernandez instruct employees regarding the number of sheets that need to be stuffed in a handbag and the manner in which the handbags are stuffed. The record contains no evidence regarding Acevedo's authority to train employees, other than Moreno's statement that Acevedo has such authority. As already discussed, the manner in which handbags are to be prepared is established by the work orders. The orders come from the office. There is no evidence in the record that, in training or correcting the employees' mistakes, the alleged supervisors went beyond the instructions in the specific work order. *Alois Box Co., Inc.*, 326 NLRB 177; *Clark Machine Corporation*, 308 NLRB 555 (1992); *Quadrex Environmental Company, Inc.* 308 NLRB 101. Instead, it appears that DeJesus-Moreno, Fernandez and Acevedo serve as a conduit, communicating management's instructions, without the exercise of independent judgment. *Id.*; *McCullough Environmental Services*, 306 NLRB 565 (1992). As such, the record does not support a finding that, by training employees and/or correcting employees' mistakes, DeJesus-Moreno, Fernandez and Acevedo are statutory supervisors.

(6) Transferring of Employees

I find that there is insufficient evidence to support a finding that DeJesus-Moreno, Fernandez and Acevedo exercise independent judgment when transferring employees. The record reveals that each worker is assigned a spot on one of the assembly lines and reports to his or her assigned spot each day. If a worker does not report to work on a given day, the alleged supervisors may move employees around so as to fill the empty spot on the affected assembly line. However, the record also reveals that Moreno is the one who determines whether the vacancy will be filled at all.

There is no evidence in the record regarding the employees' respective skills, experience and/or expertise. Nor is there any evidence that the alleged supervisors consider same in selecting the workers that will be transferred to a different spot or line. *Rose Metal Products, Inc.*, 289 NLRB 1153. Under these circumstances, moving employee(s) on a production/assembly line "is a function of routine work judgment and not a function of [independent] authority required of a statutory supervisor." *J.C. Brock Corporation*, 314 NLRB 157, citing *Clark Machine Corp.*, 308 NLRB 555, 556 (1992). Based on the evidence presented, I find that the Employer's assertion that Dejesue-Moreno, Fernandez and Acevedo are statutory supervisors by virtue of their transferring employees is without merit.

(7) Resolving Complaints/Grievances

The record fails to establish that DeJesus-Moreno, Fernandez and Acevedo can resolve anything other than minor complaints. Moreno testified regarding times that the warehouse is hot, fans are used for ventilation and employees complain to DeJesus-Moreno or Fernandez that they are not getting enough air from the fans. According to Moreno, the alleged supervisors are authorized to move fans around so as to ensure that everyone is comfortable. Moreno also testified that if employees are not getting along, DeJesus-Moreno, Fernandez and Acevedo have the authority to resolve the matter. However, this type of limited authority, resolving only the most minor of disputes and personality conflicts between employees, is insufficient to cloak DeJesus-Moreno, Fernandez or Acevedo with supervisory status. *Ken-Crest Services*, 335 NLRB No. 63 (2001); *St. Francis Medical Center-West*, 323 NLRB 1046, 1048 (1997); *Ohio Masonic Home*, supra, 295 NLRB at 394. Other than Moreno's assertion, no evidence was

presented in support of Acevedo's authority. Based on the evidence contained in the record, the Employer has failed to meet its burden that DeJesus-Moreno, Fernandez and Acevedo are statutory supervisors by virtue of their ability to resolve complaints and/or grievances.

The Employer argues, in its brief, that DeJesus-Moreno, Fernandez and Acevedo should be found to be statutory supervisors by the mere fact that they possess the authority to perform several of the indicia set forth in Section 2(11). I disagree.

An individual is a supervisor within the meaning of the Act if (s)he has the authority to perform or effectively recommend *one* of the criteria set forth under Section 2(11); the individual must also be able to exercise said authority (1) in the interest of the employer and (2) by using independent judgment. *Kentucky River*, 121 S.Ct. 1861; *NLRB v. Konig*, 79 F.3d 354 (3rd Cir. 1996); *Fort Meyer Alaska, Inc.*, 334 NLRB No. 94 (2001); *Ingram Barge Company*, 336 NLRB No. 131 (2001); *Pepsi-Cola Co.*, 327 NLRB 1062, (1999); *Chevron U.S.A., Inc.*, 309 NLRB 59. The Employer presented one witness – Moreno, who stated that the alleged supervisors possess supervisory authority and gave limited examples. The law is clear that in establishing that an individual possesses supervisory authority, conclusionary statements, without supporting evidence, is insufficient. *Chevron U.S.A., Inc.*, 309 NLRB at 61. Based on the record and for the reasons already discussed, I find that DeJesus-Moreno, Fernandez and Acevedo are not statutory supervisors and should be included in the petitioned for unit.

B. Secondary Indicia of Supervisory Status

The Employer asserts that the following secondary indicia support a finding that DeJesus-Moreno, Fernandez and Acevedo are statutory supervisors: (1) DeJesus-Moreno, Fernandez and Acevedo are considered to be supervisors by regular employees and temps; (2) DeJesus-Moreno, Fernandez and Acevedo are paid at a higher hourly rate than other employees; and (3) the ratio of employees to supervisor supports a conclusion that DeJesus-Moreno, Fernandez and Acevedo are statutory supervisors. However, secondary indicia cannot support a finding that DeJesus-Moreno, Fernandez and Acevedo are statutory supervisors unless they possess at least one of the types of authority listed in Section 2(11) of the Act. *Ken-Crest Services*, 335 NLRB No. 63 (2001); *Bellows Electric Supply of Northfield*, 311 NLRB 878 (1993); *Chevron U.S.A, Inc.* 309 NLRB at 69.

For the factual and legal reasons cited above, I find that DeJesus-Moreno, Fernandez and Acevedo are not supervisors and should be included in the petitioned for unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also

eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **IBT, Local 863, AFL-CIO/Teamsters.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list, by location, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102, on or before December 2,

2002. No extension of time to file this list shall be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by December 9, 2002.

Signed at Newark, New Jersey this 25th day of November, 2002.

Gary T. Kendellen
Regional Director
NLRB Region 22
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Newark, New Jersey 07102

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